

**CITY OF MILPITAS
UNAPPROVED**

PLANNING COMMISSION MINUTES

March 10, 2004

**I.
PLEDGE OF
ALLEGIANCE**

Chair Nitafan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Nitafan, Lalwani, Galang, Garcia, Giordano, Mohsin and Sandhu
Absent: None
Staff: Carrington, Duncan, Heyden and Rodriguez

**III.
PUBLIC FORUM**

Chair Nitafan invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
February 25, 2004**

Chair Nitafan called for approval of the minutes of the Planning Commission meeting of February 25, 2004

Commissioner Giordano noted that on page 11, her comments should be changed from "a 1 bedroom is allowed on a 1,200 square foot max addition" to "a 1 bedroom is allowed on a 1,200 square foot secondary dwelling unit".

Motion to approve the minutes as noted.

M/S: Giordano/Sandhu

AYES: 6

NOES: 0

Vice Chair Lalwani arrived at 7:02 p.m. and seated herself at the dais.

**V.
ANNOUNCEMENTS**

There were no announcements from staff.

Vice Chair Lalwani thanked staff for travel arrangements for the three Commissioners who attended the Role of the Planning Commissioner class at Sacramento UC Davis and noted that the class was very informative.

Veronica Rodriguez, Recording Secretary, noted that she left a copy of the updated zoning ordinance amendments to the Commission and that she could insert them into their Municipal code books if they bring their books to the next meeting.

Commissioner Giordano thanked staff for providing the Community Advisory Commission (CAC) minutes and the CAC agenda and noted that the March 3rd agenda item that was requested by the Commission for the zoning ordinance amendments and asked staff what were the recommendations.

Tambri Heyden, Acting Planning and Neighborhood Services Director, explained that the CAC requested an amendment to the wording that was prepared by staff that related to defining what covered parking meant and the number of covered parking spaces, one versus two, and delegated review of the revised wording to their subcommittee (which occurred the following day).

Commissioner Giordano asked if the Ethics Steering Committee has set dates for the community workshops. Ms. Heyden replied that the meetings would be held on March 31st, April 7th, April 23rd (correction made to April 22nd by Tambri Heyden) and May 5th, and that the Commission should be receiving a flier via e-mail or mail and all Commissioners are invited to attend and participate.

Commissioner Giordano announced that the Milpitas Unified School District and the Milpitas Foundation for Education is hosting a crab feed on Friday, March 19th at 6 p.m. at the Napredak Hall. The price is \$35 dollars and tickets are available at the Milpitas Post, Sushi Lovers, Milpitas school offices, Milpitas district office and Logos Etc. 100% of the profit will be for classroom supplies.

Commissioner Galang announced that the Filipino Dental Practitioners of California Inc. will be holding an inaugural dinner and ball on Saturday, March 20th at the Marriott hotel in Burlingame. He also thanked staff and taxpayers for sending him to the Role of the Planning Commissioner class at UC Davis in Sacramento.

Commissioner Sandhu announced that Bob Livengood has appointed him to the subcommittee that has been formed to honor Martin Luther King.

Chair Nitafan was happy to announce that Marilyn Hay was selected as the Milpitas Citizen of the Year, Henry Dekruyff was selected as the Police Officer of the Year and Steven King was selected as the Firefighter of the Year. The winners will be honored at an awards dinner and dance on Saturday, March 20th at the community center and cost is \$20 per person. For all of those that want to attend RSVP by March 18th.

Chair Nitafan announced that the Santa Clara County Chamber of Commerce Coalition is hosting a second legislative summit on the economy and business at the Santa Clara Convention Center on Friday March 19th from 11:30 to 1:30 p.m. and the cost is \$35 dollars per person. He explained from the flier that the purpose of the summit is to foster a better understanding about the needs of Santa Clara county businesses and to promote a strong economic recovery with cooperation and compromise. The summit will provide the opportunity for regional chambers to express their top business issues and to hear from attending elected officials to express their top business issues. Officials such as Congresswoman Zoe Lofgren, Senator Bruce McPherson, Senator Bryon Sher, Assemblyman Manny Diaz, Assemblywoman Sally Lieber, Assemblywoman Rebecca Cohn and Assemblyman John Dutra will be attending.

**VI.
APPROVAL OF
AGENDA**

Chair Nitafan called for approval of the agenda.

There were no changes from staff.

Motion to approve the agenda.

M/S: Lalwani/Giordano

AYES: 7

NOES: 0

**VII.
CONSENT CALENDAR
Item Nos. 2, 3, 4 and 5**

Chair Nitafan asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

There were no changes from staff.

Chair Nitafan opened the public hearing on Consent Item Nos. 2, 3, 4 and 5.

There were no speakers from the audience.

**Close the public hearing on
Consent Item No. 2 and
keep the public hearing
open on Consent Item Nos.
3, 4 and 5 to the March 24,
2004 meeting.**

Motion to close the public hearing on Consent Item No. 2 and keep the public hearing open on Consent Item Nos. 3, 4 and 5 to the March 24, 2004 meeting.

M/S: Lalwani/Galang

AYES: 7

NOES: 0

Motion to approve the consent calendar on Consent Item Nos. 2, 3, 4 and 5.

***2 USE PERMIT AMENDMENT NO. UA2004-3 AND "S" ZONE APPROVAL AMENDMENT NO. SA2004-12:** Request for a new 15-foot tall freestanding sign to replace an existing monument sign for the Shell Gas Station located at 900 Jacklin Road (APN: 028-05-017), zoned Highway Service. Applicant: Arc, Inc. Project Planner: Staci Pereira, (408) 586-3278. (PJ #2364). *(Recommendation: Approval with Conditions)*

***3 SITE AND ARCHITECTURE REVIEW (SZ2003-12), USE PERMIT'S NO. UP2002-42, UP2003-57, UP2003-58 AND UP2004-1.** *(Continued from February 25, 2004):* A request to demolish and redevelop a part of the Town Center shopping center, which would include a new 54,000 square foot supermarket with the sale of all types of alcoholic beverages, a 32-seat Coffee café within Safeway, and three (3) new freestanding signs within the shopping center. (APN: 028-12-004, 006, 013, 014, 016 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ #3153) *(Recommendation: Continue to March 24, 2004)*

***4 USE PERMIT NO. UP2002-42 AND SITE AND ARCHITECTURE REVIEW (SZ2003-13)** *(Continued from February 25, 2004):* A request to construct 65 townhouses at the rear of the Town Center shopping center (APN: 028-12-006 & 019). Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287 (PJ #3153) *(Recommendation: Continue to March 24, 2004)*

***5 SIGN ORDINANCE AMENDMENT NO. 124.26 (ZT2003-5)** *(Continued from February 25, 2004):* A request to amend the sign ordinance to increase the number of freestanding signs allowed in the Town Center District. Applicant: Shapell Industries of Northern California. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ #3153) *(Recommendation: Continue to March 24, 2004)*

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

VIII. PUBLIC HEARING

Kim Duncan, Junior Planner, presented Use Permit No. UP2003-59 and Environmental Impact Assessment No. EA2004-3, a request to operate a religious facility that includes religious study and worship in a vacant 61,122 square foot research and development building located in the Dixon Landing Business Park, zoned Industrial Park (MP), at 1494 California Circle and recommended approval with conditions based on the findings and special conditions noted in the staff report.

Commissioner Galang asked how would staff address a serious gas leak.

Daniel Hernandez, Environmental Consultant, explained that if a 10,000 gallon tanker truck filling empty tanks had lost integrity and a leak goes unmitigated for an hour, it would form a large enough evaporating pool that would have offsite consequences at a fairly great distance, that might even leak into a residential area. Mr. Hernandez explained that the likelihood of that event happening is judged to be improbable, if not impossible, primarily because of the multiple failures involved in that kind of release such as operative failure, mechanical failure, failure to shut off, and/or failure of the Fire Dept. to react to an emergency response.

Commissioner Galang asked for clarification on Mitigation No. 3 that reads below, and asked who is in charge of training for annual fire drills.

(Mitigation Measure 3) The applicant shall prepare, to the satisfaction of the City's Fire Department, a Plan for the site, which recognizes the nature of risks at the project site and in the industrial area surrounding the project site. Such a plan shall describe the evacuation/shelter-in-place programs and all related emergency procedures. The Plan shall include measures to protect personnel who are on facility premises, both inside and outside buildings. This plan shall also include emergency supply provisions for a time period as determined by the Fire Department. The development of the plan is the responsibility of the applicant and shall be approved prior to building occupancy. Proper implementation of this plan on an on-going basis shall be achieved by the property owner, to the satisfaction of the City's Fire Department, by submitting proof, on an annual basis, which indicates training, annual drills, and outreach have occurred. (P,F)

Ms. Duncan responded that a representative from the Fire Dept. is not available, however the applicant will be required to have inspections annually, and annual updates for the emergency preparedness plans would be required.

Commissioner Giordano asked if there is a timeline related to phase I and phase II of the project and Ms. Duncan replied that phase I will start immediately and phase II will begin as time permits.

Commissioner Giordano asked if the applicant would have to return to staff when phase II begins and Ms. Heyden replied that the applicant will not need to return because phase II is included under the use permit approval and their application is vested with the completion of phase I.

Commissioner Giordano noted that right under the table on page 2, there is a sentence that reads, "the project will not be operated as a school", and asked if staff was concerned that a school might be added at a later time. She noted that at her church, there is a preschool and asked if the applicant would have a problem if they were to add a school.

Ms. Duncan replied that the zoning ordinance defines a school as a facility that teaches classes that deal with the California State Dept. of education, therefore a school is not included for this proposal. As far as a preschool, it does not fall under the definition of a school.

As far as a preschool is concerned, Commissioner Giordano asked if the applicant would have to get a permit and Ms. Heyden responded, "Yes", and that the applicant would have to apply for a Use Permit Amendment.

Commissioner Giordano noted that 299 parking spaces were approved initially, and with the parking matrix set up now, the applicant needs 203 parking spaces, and asked staff for clarification. Ms. Duncan noted that when the building was constructed it was based on industrial uses, which is a different requirement, so the existing parking spaces were 299. The parking required for build out of the church is 199 spaces, so the applicant has 100 spaces more than is required for parking for peak demand at build out.

Commissioner Giordano wanted to understand how staff came up with the 199-space requirement since sanctuaries, classroom and offices are part of the use and questioned the one space per classroom under the parking ordinance requirement. Looking at the proposed use of the church, she noted that there will be bible studies, evening bible studies and Korean bible studies and asked staff to explain the one space per classroom since the rooms would be filled with adults for bible studies.

Ms. Duncan noted that parking requirements for religious facilities are spelled out in the zoning ordinance, and for religious facilities it is one space per five seats for sanctuaries and one space per classroom (or one space per 500 square feet of classroom), which add up to the total parking requirements for the project.

Ms. Heyden added that she is not sure whether the zoning code specifies the age of the children in the classrooms or if it is a different ratio and noted that the Commission may want to make a recommendation to staff that the one parking space per classroom for religious facilities may need to be looked at further.

Dennis Carrington, Senior Planner, noted that typically, the reason why there is one parking space per classroom is for the teacher, and that is assuming that it is for Sunday school and the kids will be brought to church. He also explained that during other times of the week when there is adult bible study, there are no services, so the use in the sanctuary would be very low.

Commissioner Giordano commented that from a broader view, it seems like the requirement is not dealing with students in classrooms, and felt that staff may want to look at this issue further. She is not going to challenge the parking ratio because there is at least 100 parking spaces available, however, she suggests that staff review how the one space per classroom was determined.

Ms. Heyden noted that staff would take a look at the issue.

Commissioner Garcia noted that while adding up the numbers in the application, he didn't come up with the 61,000 feet, so he presumed that the entire facility will be used up by the church and Ms. Duncan noted that Commissioner Garcia was correct.

Commissioner Garcia asked what happens to the tax base of the community when industrial facilities are now made into churches since there have been several church applications that have come through the Commission, he asked what is happening to City revenue. Ms. Heyden noted that it has not been analyzed comprehensively and non-profit organizations, if qualified under the tax laws, are exempt from paying taxes. That is a benefit that the City doesn't receive with that kind of use.

Commissioner Garcia asked if property taxes are still being paid and if this is a purchase or a lease. Ms. Heyden replied that it is a lease and City would still be getting property taxes

Commissioner Garcia pointed out that the City would not be getting revenue from sales for non-profit organizations.

Vice Chair Lalwani noted that Everlasting Private foundation is leasing the building to Living Word Baptist Church and asked if this is a lesser/lessee relationship or if both organizations independent from one another. Ms. Duncan noted that Everlasting Private Foundation is the property owner and the religious facility is Living Word Baptist Church.

Vice Chair Lalwani asked if Everlasting Private Foundation is a non-profit foundation and Ms. Heyden replied that she wasn't sure and that if there is a representative from Everlasting Private foundation, they could answer whether they fall under the tax law classification.

Vice Chair Lalwani asked if the other buildings in the vicinity are industrial offices or mostly vacant offices. Ms. Duncan replied that the offices are some R & D, and a few vacant buildings and there is also a hotel across the street.

Commissioner Mohsin asked if there is a time limit on how long the applicant would take to develop phase II. Ms. Duncan replied that once a use permit is secured, the applicant has up to 18 months to exercise the approval. The exercising can come in the form of pulling building permits, laying a foundation and recording entitlements. Once the applicant meets the requirements, the use permit is validated and runs with the land.

Commissioner Sandhu asked if there is an existing chemical monitoring system in the building since it is in an industrial area.

Based on his assessment, Mr. Hernandez replied that for the nature and types of material used in the area, a chemical monitoring system would not be needed.

Commissioner Sandhu noted that a chemical monitoring system was needed for the Korean Baptist Church that was approved on January 14, 2004. Ms. Duncan noted that he was correct and in that particular case, there was an existing monitoring system due to ammonia that was being used near the vicinity.

Commissioner Sandhu asked if the applicant would be providing food service for the people coming to worship, or if a caterer will be providing food. Ms. Duncan replied that the application as proposed does not include any food preparation.

Chair Nitafan noted that for phase I, 299 parishioners are expected and 750 parishioners are expected after phase II. He was concerned about the dramatic increase of people that might possibly litter Penetencia Creek and suggested that the church volunteer to clean up the creek to help the environment.

Chair Nitafan asked if the church was going into a flood zone area and Ms. Duncan replied that she wasn't sure.

Ms. Heyden recalled that last year, the City Engineer presented the Capital Improvement Projects (CIP), and noted at that time, there was a change in the flood maps and some areas were able to be taken off of the flood zone which is a benefit to homeowners who would pay less insurance rates. She wasn't clear whether the property was one of the areas that were taken off of the flood zone. Chair Nitafan introduced the applicant.

Wayne Okubo, 1686 Avila Place, Cupertino, thanked staff for expediting the application process and for all their hard work. He explained that Everlasting Private Foundation is a non-profit organization and is separate from Living Word Baptist church. Everlasting Private foundation is a support foundation that basically supports organizations that fulfill its purpose. As far as the studies that were put together by experts, the team went ahead and instead of doing 1,000 feet, they did 2,000 feet going north that was recommended by the Fire Marshall Patti Joki, and will result in minimal amount of impact to the actual project itself.

Mr. Okubo stated that Living Word Baptist church supports the mitigation measures and understands that fire drills have to be conducted with the fire dept. present, and so Pastor Kim is aware of that and will be conducting the fire drills. In addition to that, the group of experts includes Dan Hernandez who did the environmental analysis along with Richard Mindigo, architect Peter Ko and structural engineer Don Peoples who are available for questions or concerns. In addition, Living Word is ready to start on phase I, and upon completion will begin phase II. Phase II consists of a lot of structural changes and Don Peoples will be working on the plans.

Commissioner Giordano asked if the applicant went through a pre-application process and Mr. Okubo responded, "Yes".

Pastor Kim, 20566 Cedar Road Terrace, Cupertino, stated that on behalf of Living Word Baptist church, he would like to thank planning staff for putting together all of the information necessary for the permit process and explained that Living Word Baptist grew out of San Jose and is very proud to be considered as tenants for Milpitas. Pastor Kim met with the mayor and many other people, and felt that Milpitas is very concerned for the citizens and is happy to know that. He asked that all of the members of the congregation that are supporting the project stand up in the audience.

Chair Nitafan opened the public hearing.

There were no speakers from the audience.

**Close the public hearing on
Agenda Item No. 1**

Motion to close the public hearing.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

Commissioner Garcia commented that he is concerned about what is happening with the City's tax base and what is happening with city revenues. He understands that the City is considering churches and that it is an appropriate use, however, he is concerned about impacts on city revenues. He suggested that an analysis be completed to take a look and see what non-profits are doing with revenues since his concern is with long-term impacts. For example, the church is going to occupy a facility over 200,000 square feet in non-profit status. Commissioner Garcia suggests that staff analyze this before the Commission reviews another church application.

Chair Nitafan noted that right now, the Commission shouldn't divert their attention from Planning since it is in purview from City Council. Staff could take a look at the item and make a recommendation and pose it to City Council.

Commissioner Giordano noted that Commissioner Garcia made a good point and noted that she attended the Economic Development Commission meeting and at the last meeting, one of the issues that were discussed was surveying the vacant industrial buildings and suggested Commissioner Garcia might want to pass this issue through to them.

Motion to approve Use Permit No. UP2003-59 and Environmental Impact Assessment No. EA2004-3 with staff's recommended special conditions.

M/S: Giordano/Sandhu

AYES: 7

NOES: 0

IX. ADJOURNMENT

There being no further business, the meeting was adjourned at 8:52 p.m. to the next regular meeting of March 24, 2004.

Respectfully Submitted,

James Lindsay
Planning Commission
Secretary

Veronica Rodriguez
Recording Secretary